GAHC010188252018

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil) 3233/2018

1:RATAN DEV NATH AND 5 ORS
S/O- LATE SUBODH CH. DEV NATH
R/O- VILL.- BARDUBATUP (BHURAGAON), P.O.- BHURAGAON, P.S.- LAHORIGHAT, DIST.- MORIGAON, ASSAM

2: SRI MANGAL DEV NATH
S/O- LATE SUBODH CH. DEV NATH
R/O- VILL.- BARDUBATUP (BHURAGAON)
P.O.- BHURAGAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM

3: SMTI. RANI DEV NATH
D/O- LATE SUBODH CH. DEV NATH
R/O- VILL.- BARDUBATUP (BHURAGAON)
P.O.- BHURAGAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM

4: SMTI. BHORAN DEVI
S/O- LATE SUBODH CH. DEV NATH
R/O- VILL.- BARDUBATUP (BHURAGAON)
P.O.- BHURAGAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM

5: SMTI. LILA DEVI
D/O- LATE SUBODH CH. DEV NATH

R/O- VILL.- BARDUBATUP (BHURAGAON)
P.O.- BHURAGAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM

6: SMTI. KHEMA DEVI @ PANDIT
D/O- LATE SUBODH CH. DEV NATH
R/O- VILL.- BARDUBATUP (BHURAGAON)
P.O.- BHURAGAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSA

VERSUS

1:UNION OF INDIA and 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE DEPARTMENT OF HOME AFFAIRS
DISPUR
GUWAHATI-6

3:THE SUPERINTENDANT OF POLICE (BORDER)
NAGAON

4:THE SPECIAL F.R.R.O.
NAGAON
ASSAM

5:THE FOREIGNERS TRIBUNAL
NAGAON
ASSAM

6:THE OFFICER-IN-CHARGE
LAHORIGHAT
P.S.- LAHORIGHAT
NAGAON
ASSA

Advocate for the Petitioner : MR. S CHOUHAN

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C) 4513/2000

1:SMTI S DEVI

VERSUS

1:UNION OF INDIA and ORS.

Advocate for the Petitioner : MR BK KAR
Advocate for the Respondent : GA
ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 19-07-2019

The present Interlocutory Application has been filed to restore the writ petition registered as WP(C) 4513/2000 which was dismissed for default vide order dated 11.12.2003.

2. For ready reference, the order dated 11.12.2003, passed in the writ petition is extracted herein below –

"*BEFORE*

THE HON'BLE JUSTICE AMITAVA ROY

11.12.2003

None appears.

Seen the Office Note dated 08.09.2003. No steps have been taken for service of notice on the Respondents No. 1, 2, 4, 5 and 6 by the petitioner.

Dismissed for non-prosecution.

Sd/-
Amitava Roy
Judge"

3. The aforesaid order makes it clear that apart from the fact that none was there to represent the petitioner, even steps were not taken.

4. We have heard Shri S. Chouhan, learned counsel for the applicants. We have also heard Shri J. Payeng, learned Standing Counsel, Foreigners Tribunal, representing respondent Nos. 2, 5, 6 & 7 as well as Ms. A. Verma, learned Standing Counsel, NRC, representing respondent No. 4. None appears for the Union of India.

5. Before proceeding to decide the present Interlocutory Application filed for restoration of the writ petition, we are guided by the settled principles that in matters of restoration, a liberal view may be taken and the parties may be given an opportunity to contest the case on merits. With that backdrop, let us proceed to adjudicate the present Interlocutory Application.

6. In the writ petition, an order dated 09.08.1999, passed by the learned member Foreigners Tribunal, Nagaon, passed in F.T. case No. 2423/1988, was put to challenge. By the impugned order, the learned Tribunal held that the applicants and their parents were foreigners of the stream 01.01.1996 to 25.03.1971. As indicated above, when the writ petition was taken up for consideration on 11.12.2013, the same was dismissed because of non-prosecution.

7. What is intriguing in this case is the inordinate and almost inexplicable delay in filing the present application for restoration. On a specific query from this Court regarding the reasons for such delay, Shri Chouhan, learned counsel, had drawn the attention of the statements made in paragraphs 4, 5 & 7. The aforesaid statements, in the opinion of this Court, are not sufficient explanation for filing this application after almost 9 (nine) years. Rather, a perusal of the Interlocutory Application would show that the applicants lacked due

diligence in pursuing the remedies.

8. In view of the above, we are of the opinion that no case has been able to made out for condoning the delay of more than 9 (nine) years for filing the restoration application and accordingly the instant Interlocutory Application is dismissed.

JUDGE

Comparing Assistant